

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

BARBARA RIVARD-CROOK; *et al.*,)
Plaintiffs,)
vs.)
ACCELERATED PAYMENT TECHNOLOGIES,)
INC.,)
Defendant.)
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Case No. 2:10-cv-02215-MMD-GWF
Consolidated with:
2:11-cv-00986-MMD-GWF
2:12-cv-00003-MMD-GWF
2:12-cv-00776-MMD-GWF
ORDER

This matter comes before the Court on the Rivard-Crook Plaintiffs' Statement of Attorneys' Fees (#116) and Consolidated Plaintiffs' Statement of Attorneys' Fees (#117), both filed on January 22, 2013. Defendant Accelerated Payment Technologies, Inc. ("APT") filed a Response (#130) on February 8, 2013. The Rivard-Crook Plaintiffs filed a Reply (#132) on February 18, 2013. The Consolidated Plaintiffs filed a Joinder (#133) to the Reply (#132) on February 19, 2013.

This Court awarded Plaintiffs attorneys' fees under Rule 37 for APT's failure to provide certain discovery. *See January 8, 2013 Order, Doc. #106* at 11:9-24. Specifically, the Rivard-Crook Plaintiffs filed a Motion (#59) seeking (1) production of attorneys-eyes-only listings of certain APT customers, (2) production of un-redacted responsive documents, and (3) sanctions for APT's alleged intentional suppression of the "Knapp Memorandum." Consolidated Plaintiffs filed a Joinder (#61) to Motion (#59). The Court granted Plaintiffs' Motion (#59) as to (1) and (2), denied it as to (3), and awarded Plaintiffs attorneys' fees accordingly. *Id.* APT filed Objections (#107) to the Order (#106), which are currently pending before the District Judge.

DISCUSSION

Reasonable attorney fees must “be calculated according to the prevailing market rates in the relevant community,” considering the fees charged by “lawyers of reasonably comparable skill,

experience, and reputation.” *Blum v. Stenson*, 465 U.S. 886, 895-96 n. 11, 104 S.Ct. 1541 (1984). Courts typically use a two-step process when determining fee awards. *Fischer v. SJB-P.D. Inc.*, 214 F.3d 1115, 1119 (9th Cir. 2000). First, the Court must calculate the lodestar amount “by taking the number of hours reasonably expended on the litigation and multiplying it by a reasonable hourly rate.” *Id.* Furthermore, other factors should be taken into consideration such as special skill, experience of counsel, and the results obtained. *Morales v. City of San Rafael*, 96 F.3d 359, 364 n. 9 (9th Cir. 1996). “The party seeking an award of fees should submit evidence supporting the hours worked and rates claimed,” and “[w]here the documentation of hours is inadequate, the district court may reduce the award accordingly.” *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). Second, the Court “may adjust the lodestar, [only on rare and exceptional occasions], upward or downward using a multiplier based on factors not subsumed in the initial calculation of the lodestar.” *Van Gerwen v. Guarantee Mut. Life Co.*, 214 F.3d 1041, 1045 (9th Cir. 2000).

a. Rivard-Cook Plaintiffs

Craig Marquiz, counsel for the Rivard-Cook Plaintiffs, is a sole practitioner with 18 years of experience. The Court finds an hourly fee commensurate with Mr. Marquiz’s skill, experience, and reputation is \$300.00. Upon consideration of Mr. Marquiz’s statement of fees (#116) and the reasonable time required to compose a motion to compel under the circumstances, the Court will award Mr. Marquiz attorneys’ fees for 29.8 hours. Mr. Marquiz is entitled to 11.8 hours for drafting the Motion to Compel (#59), and 16.8 hours for evaluating APT’s Response (#62), drafting the Reply (#67), and drafting Motion (#76) for leave to file a supplement to his Reply. The Court will award fees for 1.2 hours for attending the November 14, 2012 hearing.

b. Consolidated Plaintiffs

Three attorneys from the firm representing Consolidated Plaintiffs aided in the subject Motion (#59), partners Neil Durrant and Lance Johns, and associate Robert Peterson. Mr. Peterson argues that his reasonable hourly rate is \$250.00, and that the partners’ reasonable hourly rate is \$295.00. Considering that Consolidated Plaintiffs filed Joinders (#61, #70) to the Motion to Compel (#59) and the Reply (#67), the Court will award them attorneys’ fees for 4 hours at the associate rate for contributing to the Motion (#59) and filing their Joinder (#61). Consolidated

1 Plaintiffs are entitled to 2 hours at the associate rate for strategizing with Mr. Marquiz regarding the
2 Reply (#67). The Court will also award fees for 1.2 hours for Mr. Durrant's attendance at the
3 November 14, 2012 hearing. Accordingly,

4 **IT IS HEREBY ORDERED** that, in the event the District Judge affirms this Court's Order
5 (#106), Defendant Accelerated Payment Technologies, Inc. shall pay the Rivard-Crook Plaintiffs'
6 attorneys' fees in the amount of \$8,940.00 within 14 days after the District Judge's order.

7 **IT IS FURTHER ORDERED** that, in the event the District Judge affirms this Court's
8 Order (#106), Defendant Accelerated Payment Technologies, Inc. shall pay Consolidated Plaintiffs'
9 attorneys' fees in the amount of \$1,854.00 within 14 days after the District Judge's order.

10 DATED this 21st day of February, 2013.

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13 GEORGE FOLEY, JR.
United States Magistrate Judge